

FAQS:

PROPOSED TRI-STATE BYLAW AMENDMENTS

Q. Why are changes being proposed?

- A. They are being proposed to prevent future litigation against Tri-State and to protect the Members from the risk of being held liable for the negligence of other Members in the operation of their distribution systems and to help reduce litigation expenses in the future.

Q. Why is that a problem?

- A. Last year, Tri-State was a defendant in a case in New Mexico that was filed as the result of a large fire that occurred in 2011. It was called the Las Conchas fire. The fire was caused when a tree located outside of a distribution right of way fell onto a 69kV line that was owned and operated by a Tri-State member. Tri-State had no involvement with the ownership, operation or maintenance of the line or the right of way, and no Tri-State lines or substations were in any way involved in the fire.

Q. How did Tri-State become a defendant if it had nothing to do with the line that started the fire?

- A. Plaintiffs argued that Tri-State should be held liable on two theories. The first theory was that Tri-State and each of its 44 Members were not separate companies. They argued that Tri-State and its Members were a joint venture or a joint enterprise. Under that theory, Tri-State would be jointly and severally liable for any negligence of any of its Members. That would mean that Tri-State would be 100% responsible for damages resulting from any negligent act of any one of its Members. Of course, the cost of the damages would be passed through to all 44 members through higher rates.

Q. What was the second theory?

- A. Plaintiffs also argued that even if Tri-State was not a joint venture or joint enterprise, it had an absolute right –and therefore the obligation– to control the maintenance and operation of a Member’s distribution system. Plaintiffs claimed that Tri-State failed to exercise that control. Under that theory, Tri-State would be liable for some or all of Plaintiffs’ damages, with the percentage of liability to be allocated among the various entities by the jury.

Q. What happened in the case?

- A. Tri-State filed a motion for summary judgment asking the judge to dismiss the claims against Tri-State. We argued that Tri-State and each of its members were separate legal entities. We argued that Tri-State owned and operated its generation and transmission facilities and had legal responsibility for only those facilities. We argued that the Members owned and operated the distribution facilities and had all of the legal responsibility for those facilities. We also argued that Tri-State had no right to control the operation and maintenance of any of the distribution facilities of our Members, and therefore no obligation to do so. The judge denied our motion for summary judgment and ordered the case to a full trial.

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Q. Why did he deny the motion?

A. In part, he relied on language in Tri-State's bylaws that he claimed supported the plaintiffs theories, at least to the extent that a jury should be permitted to decide whether Tri-State and its Members were a joint enterprise or joint venture, and whether Tri-State had control over the operation and maintenance of a Member's distribution system.

Q. What did the jury decide?

A. We had a 5 week trial in New Mexico. Ultimately, the jury decided that Tri-State and its Members were not a joint venture or joint enterprise. However, the jury did decide that Tri-State had the right to control the operation and maintenance of the Member's distribution line. The jury allocated 20% of the liability to Tri-State. We don't yet know the amount of damages in the fire. Damages will be determined in separate trials to be held late this year and early next year. We will have the right to appeal after the damages have been determined.

Q. So, why does Tri-State want to amend the bylaws?

A. We want to clarify and reaffirm the meaning and intention of the bylaws as the Members intended and have always understood them. The 44 Members have never considered themselves to be parties to a joint venture or joint enterprise. The Members have never considered that Tri-State has the right to control the operation and maintenance of the Member's distribution system. And they have never believed that one Member should be responsible for the negligence of another Member.

The proposed changes reinforce that Tri-State and its Members are independent cooperative corporations, that they are not a joint venture or joint enterprise and that Tri-State is solely responsible for the operation and maintenance of the generation and transmission facilities that it owns, while the Members are solely responsible for the operation and maintenance of the distribution facilities they each separately own.

We believe that making these changes will make it less likely that anyone suffering injury due to the alleged action or inaction of a Member will join Tri-State as a defendant. Even if that happens, we believe the bylaw amendments will make it more likely that a judge will grant our summary judgment motion and that we will not have to go through a lengthy and costly trial.

Q. Are all of the proposed bylaw changes related to the Las Conchas fire?

A. No. There is one change being proposed in response to the litigation we had with 4 of our Nebraska members that concluded in 2014.

Q. What happened there?

A. The Nebraska plaintiffs filed suit in federal district court alleging, among other things, that Tri-State had breached its contract with them by failing to offer them a rate different than the Class A rate that Tri-State had historically applied to all of its Members. They also claimed that the “buy-out” number that the Board had proposed for them to withdraw from Tri-State was unfair and that a jury should determine the fair buy-out number.

Q. What happened in that case?

A. Tri-State had again filed a motion for summary judgment arguing that the judge should dismiss the claims because the bylaws provided that the Board had authority to set the rates and had authority to determine the “buy-out” number and conditions of withdrawal. The judge granted the motion to dismiss the different rate claim because he found that the language in the bylaws made it clear that the Board had full authority to set the rates. He denied the motion as to the “buy-out” claim because the bylaws provided that the terms and conditions of any withdrawal must be “equitable”. He held that only a jury could determine what was equitable, and therefore directed the parties to trial on that issue.

Q. What did the jury do?

A. Ultimately, after a 3 week trial, the jury determined that the “buy-out” terms set by the Board were equitable and the jury found in favor of Tri-State. But we incurred significant legal costs as well as significant staff costs in having to go to trial.

Q. What is the bylaw change intended to do?

A. It is intended to make the Board’s authority in setting the “buy-out” terms and conditions the same as the Board’s authority to set rates. Then, in any future litigation, we expect to have a much better chance of having a motion for summary judgment granted so that we won’t have to go to a full trial and incur those additional legal and staff costs.



TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

HEADQUARTERS: P.O. BOX 33695 DENVER, COLORADO 80233-0695 303-452-6111

M E M O R A N D U M

DATE: February 10, 2016
TO: Tri-State Directors
Tri-State Members Managers
FROM: Ken Reif
SUBJECT: Review of Tri-State Bylaws

Enclosed is a complete copy of Tri-State's Bylaws with suggested changes in redline format that have been approved by the Board of Directors to be considered by the membership at the Annual Meeting.

Explanation of Proposed By-Law Changes

These changes clarify and reaffirm the meaning and intention of the existing bylaws. They describe the business relationship between Tri-State and its Members and make clear the respective responsibilities of Tri-State and the Members with respect to the operation and maintenance of the separate electric facilities that Tri-State and each Member own independently. The changes do not alter the existing relationships but simply confirm how those relationships have operated and been interpreted by Tri-State and its Members since Tri-State's inception.

The changes are being proposed as the result of a jury verdict from a New Mexico State District Court in October of 2015. That case (the Las Conchas fire case) concerned a large wildfire that started when a tree struck a distribution tap line owned and operated by a Member. In the lawsuit, Plaintiffs alleged that Tri-State and its Members were not independent cooperative corporations. Instead, they claimed that Tri-State and its Members were a Joint Venture or Joint Enterprise, and that Tri-State was therefore responsible for the operation and maintenance of the Member's electric distribution system. They further argued that Tri-State had the right to control the operation and maintenance of the Member's distribution system. Based on Tri-State's so-called right of control, Plaintiffs contended that the jury should hold Tri-State responsible for the Member's alleged failure to clear the line.

In support of both contentions, Plaintiffs argued that certain language found in the current bylaws supported a finding of a Joint Venture and the right of control. While the jury rejected the claim of Joint Venture and Joint Enterprise, it did find that Tri-State was 20% responsible for any damages that resulted from the fire.

The proposed bylaw changes reinforce that Tri-State and its Members are independent cooperative corporations, that they are not a Joint Venture or Joint Enterprise, and that Tri-State is solely responsible for the operation and maintenance of the generation and transmission facilities it owns, while the Members are solely responsible for the operation and Maintenance of the distributions facilities they each separately own.

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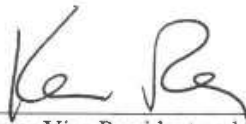
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In addition to the clarifying language, there is one substantive change that makes it clear that the Tri-State Board of Directors has the sole discretion and responsibility to determine the terms and conditions of any withdrawal by a Member. This proposed change is intended to reduce the potential for conflict in situations where a Member wishes to withdraw and the Member and Tri-State cannot agree on the terms and conditions of withdrawal.



Senior Vice President and General Counsel

KR/plm

Enclosure

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

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**AMENDED AND RESTATED
BYLAWS
OF
TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC.**

**ARTICLE I
MEMBERSHIP**

Section 1: Membership. Applicants for membership in this Corporation shall be eligible for membership by:

- (a) Executing a written application for membership and agreeing to pay the membership subscription, if any, established by the Board of Directors from time to time;
- (b) Agreeing to purchase from this Corporation electric power and energy as hereinafter specified in Section 2 of this Article I; and
- ~~(c) Agreeing to~~ Subject to Sections 6 and 7 of Article II of these Amended and Restated Bylaws, agreeing to comply with and be bound by the Articles of Incorporation and Bylaws of this Corporation and any rules and regulations that relate to or concern the governance, oversight or management of this Corporation as adopted by the Board of Directors.

Each member of this Corporation as of the date of these Amended and Restated Bylaws shall be and continue to be members of this Corporation, until termination of such membership as contemplated herein. Subject to the foregoing, no applicant shall become a member unless and until it has been accepted for membership by the Board of Directors or the members. No member may hold more than one membership in this Corporation, and no membership in this Corporation shall be transferable. Each member shall be entitled to one (1) vote and no more upon each matter submitted to vote at a meeting of the members. Provision may be made in these Bylaws for additional classes of membership.

Section 2: Purchase of Electric Power and Energy.

- (a) Unless otherwise specified by written agreement, each member shall terminate any contract which it may have for the purchase of electric power and energy from any other supplier when electric power and energy becomes available from this Corporation or as soon thereafter as it may legally do so, and shall purchase from this Corporation all electric power and energy used by the member. Each member shall pay therefor monthly at rates or on a basis to be determined from time to time in accordance with these Bylaws. In connection with such purchase, each member and this Corporation expressly disclaim any intent or agreement to be a partnership, joint venture, single or joint enterprise, or any other business form except that of a cooperative corporation and member.
- (b) It is expressly understood that amounts paid for electric power and energy in excess of the cost of service are furnished by members as capital in this Corporation, and not as profit of or to this Corporation, and each member shall be credited with capital so furnished as provided in these Bylaws. Each member shall also pay all amounts owed by such member to this Corporation as and when the same shall become due and payable.
- (c) The electric power and energy purchase requirements set forth in this section shall apply to members' all-requirements contracts with Tri-State Generation and Transmission Association, Inc., in existence prior to the effective date of these Amended and Restated Bylaws.

Section 3: Withdrawal, Expulsion, Termination and Reinstatement of Membership.

- (a) A member may withdraw from membership upon compliance with such ~~equitable~~ terms and conditions as the member may agree with the Board of Directors or, absent such an agreement,

upon compliance with such terms and conditions as the Board of Directors in its sole discretion

may prescribe provided, however, that no member shall be permitted to withdraw until it has met all its contractual obligations to this Corporation. The Board of Directors may, by the affirmative vote of not less than two-thirds (2/3) of all the directors, expel any member who fails to comply with any of the provisions of the Articles of Incorporation, Bylaws, or rules and regulations adopted by the Board of Directors from time to time, but only if such member shall have been given written notice by the Secretary of this Corporation that such failure makes it liable for expulsion from membership, and such failure shall have continued for at least ten (10) days after such notice was given. Any expelled member may be reinstated by vote of the Board or by vote of the members at any annual or special meeting.

- (b) Upon withdrawal, cessation of existence, or expulsion of a member, the membership of such member shall thereupon terminate. Termination of membership in any manner shall not release a member from any debts due this Corporation nor impair the obligations of a member under any contract with this Corporation.
- (c) The Board of Directors shall have authority to prescribe equitable in its sole discretion the terms and conditions to be applied when a member withdraws from membership, ceases existence, or is expelled from membership, and such may be done by policy or otherwise and may include procedures for the establishment of a trust fund to receive on behalf of such member's patrons all patronage capital as this Corporation may from time to time distribute to all of its members, or in lieu thereof procedures whereby a member proposing to withdraw from membership or ceases existence or who is expelled from membership, may elect to receive a discounted amount of patronage capital which has been allocated at the time of such withdrawal,

cessation of existence, or expulsion from membership.

ARTICLE II RIGHTS AND LIABILITIES OF MEMBERS

Section 1: Property Interest of Members. Members shall have no individual or separate interest in the property or assets of this Corporation, except that upon dissolution, after (a) all debts and liabilities of this Corporation shall have been paid, and (b) all capital furnished through patronage shall have been returned, as provided in these Bylaws, the remaining property and assets of this Corporation shall be distributed among the members in the proportion which the aggregate patronage of each bears to the total patronage of all members and former members pursuant to the provisions of applicable law.

Section 2: Non-Liability For Debts of Corporation. The private property of the members shall be exempt from execution or other liability for the debts of this Corporation and no member shall be liable or responsible for any debts or liabilities of this Corporation.

Section 3: ~~Operation of Member's System. Except to the extent that failure shall be due to a cause beyond its~~Member's Requirement to Purchase Wholesale Electric Power and Energy. Member shall not reduce, suspend, transfer or contract away its requirements for wholesale electric power and energy purchased from this Corporation during the term of its all-requirements contract, unless such reduction, suspension, transfer or contraction shall be due to a cause beyond the member's control (such as failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, inability to obtain permits, licenses, rights-of-way or authorizations from any local, state or federal agency or any person, or restraint by court or public authority), which by exercise of due foresight the member could not have reasonably been expected to avoid, and which by exercise of ~~due diligence~~reasonable efforts it shall be unable to overcome, each member shall continuously operate and maintain its system for the full term of its all-requirements contract with this Corporation, using reasonable diligence to supply therefrom to patrons within its service area (without contraction due to acts of omission of the member) electric energy provided by this Corporation pursuant to the all-requirements contract. This provision is enforceable by specific performance and/or injunction but shall not apply to a member's day-to-day business operations, including the member's operations and maintenance practices relating to its electric distribution system.